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**MEMORANDUM**

**TO:** Shawn M. Garvin, Secretary

**THRU:** Susan E. Love, AICP, Climate & Sustainability Section Lead *SL*

**FROM:** Kevin F. Coyle, AICP CEP, Principal Planner *KFC*

**RE:** Recommended CZA Status Decision for Drawbridge Claymont, LLC

**DATE:** May 1, 2017

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**Introduction**

Drawbridge Claymont, LLC submitted an application on March 20, 2017, seeking a Status Decision under the Delaware Coastal Zone Act ("CZA;" Chapter 70 of Title 7 of the Delaware Code) to determine if a Coastal Zone Act Permit is required to construct and operate a new 240-car rail yard on a portion of the former General Chemical property, identified as the "South Parcel", at 6300 Philadelphia Pike, Claymont. The rail yard will provide storage for railroad rolling stock and support transportation of materials to and from the Braskem polypropylene complex in Marcus Hook Pennsylvania.

**Description of the Project**

The property (New Castle County Tax Parcel No. 06-06-073.00-002), located in Claymont, Delaware at 6300 Philadelphia Pike (US Route 13), is the former General Chemical

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manufacturing facility. The plant was originally constructed and operational in 1915 and expanded and modernized through 1980. The General Chemical facility officially closed in November 2003 and has been undergoing a transitional shutdown with extensive continual demolition since the closing.

The “South Parcel,” owned by Drawbridge Claymont, LLC, is divided into two distinct areas that are identified as Phase 1 and Phase 2. The entire South Parcel is the subject of an U.S. Environmental Protection Agency (EPA) Consent Order remediation effort. The requirements of the EPA Consent Order are to place an impervious cap on the South Parcel. A Resource Conservation and Recovery Act (RCRA) Corrective Measures Implementation 90% Design Report Phase I (CMI Report) was submitted to EPA in November 2016 to install the impervious cap on Phase I of the South Parcel and is pending final EPA approval.

The proposed project includes construction of an impervious cap to remedy environmental conditions and building a new 240-car rail yard on the portion of identified as South Parcel Phase I. The rail yard will provide storage for railroad rolling stock and support transportation of materials to and from the Braskem polypropylene complex in Marcus Hook, Pennsylvania.

The new rail yard will be used predominately for storage of outbound loaded polypropylene hopper cars to be shipped to converters in Marcus Hook, Pennsylvania. In Marcus Hook, the polyethylene pellets will be off-loaded and processed to make consumer goods such as automobile/appliance components, reusable containers and textiles. In addition, the rail yard will have a small loading area for transferring polypropylene pellets from hopper cars to trucks for transportation to other local converter sites. This transfer operation is estimated to involve 50-60 trucks per month.

### **Project Analysis**

There are three possible outcomes from an application for a CZA Status Decision: 1) the proposal is deemed a “heavy industry,” and the applicant is barred from undertaking that activity in the Coastal Zone; 2) the activity is allowable and requires a CZA permit; and 3) the activity is not regulated; therefore, no Coastal Zone permit is required.

The definition of “heavy industry use” is set forth in §7002(d) of the CZA. Such a use “characteristically” involves more than twenty acres. According to the application, the site in question involves a total of 71.49 acres; 27.5 acres of which comprise the “South Parcel”, which is the focus of the planned development. The rail yard facility will utilize approximately fourteen acres (per the application narrative at page 7; the response to Part 4.7 at page 9 indicates 13 acres). Thus, the actual use falls below the twenty-acre threshold set forth in the statute.

The proposed rail yard facility lacks the characteristics of typical heavy industry uses set forth in §7002(d), such as smokestacks, tanks, distillation columns, chemical processing equipment,

scrubbing towers, pickling equipment, or waste treatment lagoons. The use can readily be distinguished from heavy industry examples set forth in the statute: refineries, steel plants, paper mills, and chemical plants. The proposed use is not among the prohibited uses set forth in the *Regulations Governing Delaware's Coastal Zone* at §4.0. Finally, the statute provides generic examples of uses not included in the definition of “heavy industry”, such as “on-shore facilities” (other than tank farms or storage tanks) “consisting of warehouses, equipment repair and maintenance structures...” The proposed rail yard is roughly analogous to such facilities. It is not a prohibited heavy industry use.

Although the location borders the Delaware River, it is clear from the application that the contemplated use is not a “bulk product transfer facility”, as defined by CZA §7002(b). That definition requires the transfer of bulk quantities of any product from a vessel to shore, or vice versa. The proposed rail yard would not involve any such transfers to or from ships. Bulk product transfer would occur only on land, involving rail cars and trucks, not ships. To the extent that a change to such use would be contemplated in the future, a new application and/or a request for status decision would be required.

The second inquiry is whether a Coastal Zone permit is required for the proposed rail yard as a “manufacturing use”, pursuant to 7 *Del.C.* §7004. A manufacturing use involves the “mechanical or chemical transformation of organic or inorganic substances into new products, characteristically using power-driven machines and materials handling equipment...” Also included within this definition are “establishments engaged in assembling component parts of manufactured products...” Such uses are permissible within the Coastal Zone by permit only, as set forth at §6.0 of the *Regulations Governing Delaware's Coastal Zone*. Unless excepted by §5.0 of the *Regulations*, any new manufacturing facility must be evaluated based on the factors set forth at §7004(b), with respect to environmental impact.

The specific use contemplated by this application is not set forth in §5.0 of the *Regulations Governing Delaware's Coastal Zone*, titled “Uses Not Regulated”. However, the plan to store rail cars and stock at the facility is consistent with §5.2, warehouses and storage facilities, an unregulated use. Also exempt are parking lots, per §5.4, which suggests that the presence of trucks for loading is not a regulated use. While not determinative here, the *Regulations* provide guidance, suggesting that the proposed use is similar to other types of facilities and activities that are deemed to not constitute a manufacturing use.

Returning then to the statutory definition of manufacturing, it is clear from the application that no “transformation” of raw materials into finished products using machinery is contemplated for this site. To the extent that “component parts” would be present, namely polypropylene, the pellets would be transported, not assembled, on site. The proposed use is best described as a land-based bulk product transfer facility, not involving any manufacturing.

The approach outlined above is consistent with the *Guidance for Implementation and Interpretation of the Regulations Governing Delaware's Coastal Zone*, found in Appendix C of the *Regulations*. The guidance for determining whether a permit is required, at §2.3, contemplates two levels of review. The first step involves identifying activities that are clearly exempted from regulation due to the lack of any environmental consequences. Any negative impact with respect to the criteria of §7004(b) would trigger the second step, and require a permit as a manufacturing use. It is thus useful, in ascertaining whether a permit should be required, to examine the environmental impact.

The environmental impact of this project would be minimal, and arguably a net benefit to an abandoned heavy industry site. The applicant anticipates no regulated air emissions, and no adverse effect on water quality. According to the Application, at page 14, an “extensive stormwater management system above the geo-synthetic cap will accommodate the anticipated stormwater quality and quantity”, thus alleviating any drainage or flooding concerns. Appropriate erosion and sedimentation measures will be undertaken during construction. The existing industrial site lacks vegetation and does not provide animal habitats. The wetland area of the parcel is not a part of the project, and will not be adversely affected by it. No solid or hazardous waste will be generated. Given the current Conrail spur in place, the impacts in terms of noise and vibration and odors will not change significantly. The project is consistent with county zoning and planning, and no adverse effect on public recreation, or on adjacent residential areas, is anticipated. As the applicant contends, “[o]verall, the local aesthetic quality should be improved by repurposing the defunct chemical facility into a rail yard to support local industry.”

In summary, the proposed use for this site is not a prohibited heavy industry use (or a prohibited bulk transfer facility), nor does it fit the statutory definition of a manufacturing use requiring a permit. The rail yard activity would have negligible environmental impact, and no foreseeable adverse aesthetic or neighborhood effect. The plan would place back into service an abandoned heavy industry site, with appropriate safeguards, and likely economic and tax benefits. Although not specifically exempted by statute or regulation, the projected use does not meet the criteria for requiring a Coastal Zone permit, and thus no permit is required.

### **Public Commentary**

A legal notice announcing receipt of the Status Decision application was published in the News Journal and in the New Castle Weekly on March 29, 2017. No comments were received from the public.

### **Recommendation**

The *Regulations Governing Delaware's Coastal Zone* specify that new activities that may result in a negative impact on the environment, economy, aesthetics, etc. require a permit (7 Del Admin Code 101 at §6.0). Conversely, activities that do not constitute initiation, expansion, or

extension of heavy industry or manufacturing uses do not require a permit. Based on the analysis of program staff and the Deputy Attorney General assigned to represent the Department with respect to matters arising under the Coastal Zone Act, a Coastal Zone Act permit is not required for this project because the proposed activity constitutes a use that is not regulated by the Coastal Zone Act.

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Approved, Shawn M. Garvin, Secretary

Date